

THE RECORD OF THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK

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Association Activities

THE PRESIDENT of the Association on March 17 sent the following telegram to the Governor, Mayor Wagner and political and legislative leaders:

"The people of our state are entitled to have judges selected on the basis of their qualifications for office. This is assured by objective scrutiny of the qualifications and fitness of candidates for judicial office by Bar Associations and other non-political civic groups. This wholesome process may be thwarted by current legislative proposals to create new judgeships to be divided between the major political parties and filled by candidates who by prior agreement of political leaders will be nominated by both parties. Such a process deprives the electorate of a choice at the polls.

"We welcome bipartisan nominations for sitting judges who have satisfactorily completed a term of office and also of outstanding lawyers of proven worth and fitness. However, we cannot condone political deals which encourage the selection and election of candidates who may not possess the necessary qualifications for judicial office.

"In view of press reports indicating that deals are even now being negotiated for these judgeships we will vigorously oppose legislation creating new judgeships unless the political leaders will now state publicly (1) that the names of all candidates who will receive serious consideration will be submitted to appropriate Bar Associations for investigation at least 20 days prior to the judicial conventions and (2) that they will support only those candidates approved as qualified by the Bar Associations.

"This telegram is being released to the press."

Other recipients of the telegram were: Lt. Governor Malcolm Wilson, Robert MacCrate, Walter J. Mahoney, Joseph Zaretski, Joseph F. Carlino, George L. Ingalls, Anthony J. Travia, George H. Pierce, John Robert Brook, Carmine De Sapio, Joseph T. Sharkey, Herbert Koehler, Charles Buckley, Joseph McKinney, Michael Pendergrast, Bernard Newman, Paul A. Fino, Frank Kenna, John R. Crews, James Flood and L. Judson Morhouse.

On March 23 the President joined with Francis S. Bense, President of the New York County Lawyers' Association, in sending the following telegram to the Governor, Mayor Wagner, and the same political and legislative leaders:

"The New York Times for March 23 reports that a 'Legislative Deal' provides for 15 new municipal court judgeships. There has been no showing of need for these additional judges and they have not been recommended by the judicial conference. Furthermore, consideration of any need should await the probable consolidation of the municipal and city courts next year. We urge that you oppose this legislation.

"Moreover, as of today we have not had satisfactory public assurances that candidates for new judgeships proposed in bills now before the legislature will be selected from among candidates found qualified by the appropriate bar associations as requested in our earlier telegrams. Therefore we are now, by this telegram, calling upon you to oppose the enactment of legislation creating all new judgeships. Will you please reply. This telegram has been released to the press."



OSCAR SCHACHTER, Director of the Legal Division of the United Nations Secretariat, was a guest of the Committee on International Law, Isaac N. P. Stokes, Chairman. Mr. Schachter discussed with the Committee the legal problems of the United Nations Secretariat staff and the representatives of member countries under the Headquarters Agreement with the United States and also problems arising from the fact that the United States has not ratified the Convention on Privileges and Immunities of the United Nations.

In January the Committee's guest was Charles Noyes, of the Carnegie Endowment for International Peace. Mr. Noyes considered with the Committee problems of public relations and

legal difficulties of some of the representatives to the United Nations. There was a discussion of the ways in which residents of New York City could meet and entertain representatives to and personnel of the United Nations.



THE New York Employing Printers Association, Inc. has awarded its Certificate of Special Merit to the Association for the typographical excellence of the Association's Memorial Book. This is one of a number of such awards which the Association's publications have received over the years. The Memorial Book was printed by the Harbor Press.



LEONARD F. C. REICHLE, Nuclear Engineering Director of Ebasco Services, Inc. and formerly Assistant Director of Reactor Development of the Atomic Energy Commission, was the guest of the Committee on Atomic Energy, Daniel James, Chairman. Mr. Reichle discussed the history, status and prospects of central station nuclear power and illustrated his discussion with the use of slides. He also discussed the possibilities of nuclear shipping.



THE SIXTEENTH Annual Art Exhibition, sponsored by the Committee on Art, Edmund T. Delaney, Chairman, will open on April 25 at 4:30 P.M. with a reception at the House of the Association. Myer D. Mermin is Chairman of this year's Subcommittee on the Art Exhibition.



FORMER PRESIDENT Whitney North Seymour was awarded the gold medal of the American Arbitration Association "in recognition of his distinguished contribution to the administration of justice, private and public." Mr. Seymour is a former President of the American Arbitration Association.

Before the presentation ceremonies G. Grant Mason, Jr., President of the Arbitration Association, reported that more arbitration cases were administered in 1960 than in any prior year. He

outlined plans to establish new procedures for expedited service of small claims.



ATTENTION is directed to the 1961 Charter Flight Program for members of the Association and their families sponsored by the Young Lawyers Committee, Robert Coulson, Jr., Chairman. The three flights arranged are:

FLIGHT #1**\$97**

Sabena Boeing Jet

Brussels to New York (one way only)

Saturday, July 15, 1961

FLIGHT #2**\$281**

Pan American DC7C

Sunday, July 30, 1961
New York to ParisMonday, August 28, 1961
London to New York**FLIGHT #3****\$292**

Irish Airlines Boeing Jet

Friday, August 25, 1961
New York to LondonMonday, September 18, 1961
Paris to New York

Further information on the flights is available at the Office of the Executive Secretary.



NORTHWESTERN UNIVERSITY will sponsor a Conference of Criminal Court Judges and Lawyer-Legislators to be held July 6-8 at the School of Law on the Chicago campus. The purpose of the conference is to "bring about a better understanding between police and the courts, as well as between police and the legislatures." The School of Law will also conduct on May 15-17 a Conference of Police Officials on Understanding the Attitude of the Courts and Legislatures regarding investigation procedures

and fair criminal trials. Further information may be secured from the law school.



On March 23 the new City and Municipal Courthouse was opened. At the ceremonies, sponsored by the Municipal Court, Presiding Justice Botein in the course of his remarks said:

"It is only because of the heroic efforts of judges of this city, in all courts, that our calendars are not hopelessly out of control as they are in so many other communities. Our judges are struggling manfully, throughout the City, to cope with a relentless tide of incoming cases that at times threaten to engulf the courts. The Judicial Conference has recognized the necessity and recommended that the Legislature provide additional judges in certain courts. I trust the proposal does not become a shuttlecock of politics, bandied about by political expediencies rather than court needs; and I hope judges will be nominated on the basis of their fitness for judicial office, with the expert appraisal and advice of our highly qualified bar associations."

The Calendar of the Association for April and May

(as of March 31, 1961)

- April 3 Dinner Meeting of Committee on Professional Ethics
- April 4 Dinner Meeting of Committee on Real Property Law
Meeting of Committee on Insurance of Association Property
- April 5 Dinner Meeting of Executive Committee
- April 10 Dinner Meeting of Special Committee on Housing and Urban Development
Joint Dinner Meeting of Committees on Corporate Law Departments and Trade Regulation
Meeting of Committee on Uniform State Laws
- April 11 Dinner Meeting of Committee on State Legislation
Dinner Meeting of Committee on Insurance Law
Dinner Meeting of Special Committee on Banking
Meeting of Section on Labor Law
- April 13 Meeting of Section on Wills, Trusts and Estates
- April 17 Dinner Meeting of Committee on Atomic Energy
Symposium: Sponsorship Committee on Aeronautics
- April 18 Dinner Meeting of Committee on State Legislation
Dinner Meeting of Committee on Trade Marks and Unfair Competition
Dinner Meeting of Committee on Arbitration
- April 19 Meeting of Committee on Admissions
Dinner Meeting of Committee on Federal Legislation
Dinner Meeting of Committee on Courts of Superior Jurisdiction
Meeting of Committee on Foreign Law
- April 20 Dinner Meeting of Committee on the Bill of Rights
Dinner Meeting of Committee on Administrative Law

- April 24 Meeting of Library Committee
Dinner Meeting of Special Committee on Family Law
Dinner Meeting of Committee on Copyright
- April 25 *16th Annual Art Exhibition—Opens 4:30 P.M.*
- April 26 Meeting of Committee on Domestic Relations Court
Dinner Meeting of Committee on Municipal Affairs
- April 27 Dinner Meeting of Committee on Increase of Membership
Meeting of Section on Taxation
- April 29 Seminar: Sponsorship Committee on Military Justice
- May 1 Dinner Meeting of Committee on Medical Jurisprudence
Dinner Meeting of Committee on Professional Ethics
- May 3 Dinner Meeting of Executive Committee
- May 4 Dinner Meeting of Committee on Legal Aid
Dinner Meeting of Committee on Surrogates' Courts
Dinner Meeting of Special Committee on the Study of
Commitment Procedures
- May 8 Dinner Meeting of Special Committee on Housing and
Urban Development
Dinner Meeting of Committee on Corporate Law Depart-
ments
- May 9 *Annual Meeting of Association*
- May 11 *Fourteenth Annual Association Night*
- May 12 *Fourteenth Annual Association Night*
- May 16 Meeting of Committee on Arbitration
Dinner Meeting of Committee on Aeronautics
Dinner Meeting of Committee on Trade Marks and Un-
fair Competition
Dinner Meeting of Committee on Administrative Law
- May 17 Meeting of Committee on Admissions
Dinner Meeting of Committee on Federal Legislation
Dinner Meeting of Committee on Courts of Superior Juris-
diction
Dinner Meeting of Committee on Foreign Law
Meeting of Section on Wills, Trusts and Estates

196

THE RECORD

- May 18 Meeting of Section on Taxation
- May 22 Meeting of Library Committee
Dinner Meeting of Committee on Copyright
Meeting of Special Committee on Family Law
- May 23 Dinner Meeting of Committee on Domestic Relations
Court
Dinner Meeting of Committee on the Bill of Rights
- May 24 Dinner Meeting of Committee on Municipal Affairs
- May 25 Meeting of Section on Labor Law

A Housewarming Reception

*"... a social event fairly inaugurating the fashionable
New York season of 1896-1897"*

A French king, being asked substantially the same question which the great legal poet, Sir William Jones, in one of his odes put and answered in verse, "What constitutes a state?" answered with true Bourbon conceit, "*L'état c'est moi.*" Any lawyer standing in the center of the almost matchless law library in the newly dedicated building of the New York Bar Association, and putting the question, "Who most constituted this library?" would receive as answer from any member, "Why, Wm. J. C. Berry, who for the last twenty-seven years of the existence of our Bar Association has been our librarian"—himself a graduate of the Columbia Law School, and who had previously been head clerk and salesman and student of law books, while a youth, in the once notable law-book emporium of John S. Voorhies. Berry was what ladies name "an object of interest" on the evening of October eighth, when the magnificent clubhouse of the Bar Association was dedicated by a social reception, assisted in by a thousand lawyers and as many guests of laymen and lay-ladies.

I have advisedly used the word "magnificent" as applied both to the exterior and interior of the new edifice that fronts properly on West 44th St., between aristocratic Fifth Avenue and democratic Sixth Avenue, and backs two hundred feet to its members' entrance in the rear on West 43d St., where for neighbors it has the staid Century Club, a medical club, The Howard Club, and the sportive Racket Club, thus constituting that thoroughfare what Pall Mall in London is—par excellence a club street.

Editor's Note: The above description of a "housewarming reception" held at "the marble palace of the Bar Association" on October 8, 1896, was published in *The Green Bag* (Vol. VIII, No. 11, November, 1896). The reception marked the official opening of the House of the Association. Members will be pleased to read the author's prophesy, fulfilled even to this day: "Wives, sisters and sweethearts might hereafter banish any regrets at the absence of lawyer-husband or brother or lover who had gone to the Bar Association clubhouse: because each knew that therein his lines must fall in pleasant places."

The Lord Chief Justice of England, unable to remain in this country for the opening dedication of the building, was, on the day preceding his sailing for home, conducted over the fully furnished building, and from his lips fell again and again the word of description that I have used—"magnificent." He added that it was a subject for his wonder, when he learned that the cost of the ground, building, library, and furniture, which approached one hundred and fifty thousand English pounds, or three quarters of a million of dollars, had been raised by members of the New York Bar in their private capacity.

Let us examine what it was that invited the observation of the admiring Lord Chief Justice, who doubtless recalled the shabby quarters of the Solicitors' Club rooms on Chancery Lane in London, or the homes of its Inns of Court that, although rich in memories and historic glamor, showed no such union of luxury, comfort and incentives or aids to professional work as he found in the Bar Association building.

Upon entering he had surveyed the white marble frontage, planned by the world-renowned architect, Eidlitz, in impressive architectural composite work, constituting a rare union of dignity and beauty of façade. When the Lord Chief Justice passed up the outer granite steps, he entered, between marble pillars of Grecian-Doric school and marble wainscoting, into a long, wide corridor of lofty ceilings, opening a *coup d'œil* of a nave two hundred feet long, exposing bays, a mosaic tiled floor, dazzling walls, and a procession of Ionic pillars or columns of the choicest Numidian marble, transported over ten thousand miles. He also glanced down marble stairways that led into a basement in which were the offices, smoking-rooms, kitchen, and electric plant for supplying the eleven hundred carbon burners throughout the four stories of the edifice. Passing through this entrance-nave he saw, on either side, convenient and tastefully upholstered and furnished retiring chambers for officers of the Association, an expensive cloak-room paneled in richest oak, and a reception room palatial in appointments. He saw the latest form of elevator—or as his countrymen term it, lift—capable of accommodating fifteen

skyward travelers at one time, and surrounded with iron scroll work of exquisite design. Preferring however to ascend by one of the marble staircases, he observed lintels and wall and balustrade facings of polished Siena marble, veined in red and blue and polished almost to look like mirrors. He passed upward with a wide window of plate glass at his side affording the best of legal light, and next found himself in a second nave with practically again a building on each side. Floor-tiles, bays, and Ionic marble pillars exactly as below. Toilet conveniences on one side and more small retiring rooms; and on the other side the reading-room and three spacious rooms devoted to miscellaneous reference books and to law-treatises published in every foreign tongue—perhaps two thousand volumes in number, and contained in scattered low-crowned single bookcases. Above these, on the walls, oil paintings of ex-presidents of the Association and celebrated jurists and lawyers—the gifts from time to time of individual members—and also prints of others. There, a fine life-size crayon of Justice Samuel Nelson in his judicial robes looks around a corner at the oil painting of Thomas Addis Emmet that was reproduced by engraving in the August GREEN BAG, and Ambrose Spencer's portrait sheds his benignant smile. James T. Brady's massive head and very oratorical face and pose of figure remind veteran members of his jury prowess in days gone by. Horace Binney's engraved picture suggests legal "Brotherly Love." Engravings of assembled courts in Great Britain, at Washington, or in State capitals, are also to be inspected. "In time," says Librarian Berry to the Lord Chief Justice, "this building will become a national portrait-gallery of distinguished jurists in a sort of Apostolic succession."

Upon the next floor the distinguished visitor is shown into a large front chamber containing a score of several-shelved book-racks devoted to volumes not much sought after, and bound volumes of briefs in the United States Supreme Court, the Court of Appeals, and Appellate divisions of the Senate Supreme Court. But the third floor—removed from the hum and roar of the street in a city that has won the sobriquet of "the City of Noises"—is to

be found the *pièce de résistance*: for the frontage on 44th Street is devoted to library accommodation, while that on 43d Street is assigned to the assembly room of the Bar Association, with its official platform and upholstery confronted by fifteen hundred comfortable stall-chairs, in rows, upon a floor capable of containing many more chairs when desired.

Standing near the extreme front of the library, just where the main aisle is crossed by an intersecting bay-aisle seventy-five feet in length, a climax of astonishment strikes upon the brain of the Lord Chief Justice as he views the wealth of law-books, equal in number of volumes to the possessions of all the libraries of the two Temple Inns, Lincoln's and Gray's Inns, when aggregated; and larger than the law library of Congress, which he had been shown on his recent visit to Washington. He sees also at the entrance aisle six double rows of long oaken desks with twenty-four comfortable cane upholstered chairs, and above each an electric light: all for the convenience of members in their library work.

The Lord Chief Justice next walks through and around the alcoves and finds, on shelves, statutes and reports classified country by country and state by state, and every known legal treatise or bound legal periodical, all arranged alphabetically by author's name. Asking how many volumes are within the walls, Librarian Berry answers: "In exact numbers, 569 less than 50,000."

The catalogue is produced: in two volumes and numbering together a few less than a thousand printed pages; but each interleaved with blank paper on which are written in red ink additions made from time to time. In one volume the arrangement is by authorship or by the name belonging to statutes and reports, and in the other volume, arrangement is by subjects.

Berry did not go farther, as he might truly have done, and told how, to a large extent, he could with a lawyer's trained reference memory quote volumes and pages for many a remarkable legal doctrine or *cause célèbre*. Indeed I have heard my late law partner, a charter member of the Association, Aaron J. Vanderpoel, substantially remark, often when some new law-point arose, or some doctrine was oddly differentiated in a pending matter,

he, previous to roaming among probable volumes, had tapped Berry's suggestive memory and found it a valuable beacon to a path of precedent in the matter.

Inasmuch as the business affairs of clients ramify themselves into every portion of the globe, it is necessary for the American lawyer to be able to find references to foreign statutes, decisions, usages and customs. He, whether a member of the Bar Association or its guest from a distance, will not be at a loss in this library to find in such respect whatsoever book he wishes. The law-treatises and the statutes or laws of every civilized country have been placed upon its shelves. Those books which are comparatively obsolete or superseded are also on shelves for the tracing of legal evolution. The volumes, for instance, collected under *verbo* India are many and odd in title and treatment. Copies of all our treaties are here, opinions of attorney-generals also. Lawyers baffled in the Congressional library over mooted points have solved them in this library. Berry has often been called upon to answer inquiries from lawyers at a distance respecting references; and in his desk at the east end of the library-room are on file letters from eminent jurists asking information as to volumes and cases.

Much of the anxiety, worry, and systematic arrangement for the recent house-warming had fallen upon Sidney Smith, of the historic firm of Martin and Smith, who is treasurer; and perhaps to his taste is largely due the harmonious selection of the exquisite upholstery throughout the edifice, and the choice of carpets—a taste inherited from his mother, a Knickerbocker belle in former days, of social fame and refinement. Doubtless many of the ladies who graced the house-warming reception on the evening of the eighth of October ultimo marveled at the taste displayed by a mere man in the decorations and internal arrangements of the entire building.

This reception was a social event fairly inaugurating the fashionable New York season of 1896-7. Flora had associated herself with Themis in massing roses, pinks, violets and newborn chrysanthemums in all the corridors and rooms, and in embrac-

ing polished pillars and book-shelves with smilax. Brilliant toilettes had produced memories of grace and beauty for future gatherings of lawyers, and even amid their ponderings over dry library books. Tennyson's "rosebud garden of girls" was seen in every portion of the legal palace; and music came to fasten melodies upon rafters and frescoed ceilings to be recalled in future days and evenings. Wives, sisters and sweethearts might hereafter banish any regrets at the absence of lawyer-husband or brother or lover who had gone to the Bar Association clubhouse: because each knew that therein his lines must fall in pleasant places. The ladies were told how and why Coke upon Lyttleton was a phrase only used nowadays by novelists; Gould on Kent or "Browne's Domestic Relations," or "Jones on Pledges," were more in vogue as titles of modern treatises in jurisprudence than Coke upon Lyttleton or Fearn on Contingent Remainders. And when the ladies demurely asked of their legal escorts whether legal science was not confusing, they were shown, for affirmative answer, Beach on the "Modern Law of Contracts" of 3,000 pages, containing 26,000 cases examined, cited and reviewed. Not a few ladies shuddered when, passing through the library, they read on the back of a volume, "Bishop on Marriage and Divorce," and while cognizant of the relation of a bishop towards marriage, they marveled as to what a bishop had to do with divorce. Nor did they address their marvel to Lord Bishop Dowden of Edinburgh, who was a notable guest of the evening; nor to Chief-Justice Fuller, nor ex-Ambassador Phelps, nor the redoubtable Doctor Parkhurst, who were also among the evening visitors.

The lady guests lingered around the oil portraits of ex-Presidents. They were impressed with the gravity of William M. Evarts, its first executive; with the clerical look of Stephen P. Nash, who rightfully came by it as the standing counsel, through half a century, of Trinity Church; with the smiling face of Francis N. Bangs, prematurely taken away by fell disease; with the encyclopædic countenance of James C. Carter, who had flung respectful defiance in the faces of the Supreme Court judges when fighting for the income tax; with the poetic face of William

Allen Butler (author of the ladies' favorite poem, "Nothing to Wear") and whose facial resemblance to his father Benjamin F. Butler, the great New York reviser, when the latter's portrait, framed on the walls of another room, was compared with that of the son; with the conundrum-like features of Joseph H. Choate; with the Parisian look of Frederick R. Coudert; with the stern, implacable face of Wheeler H. Peckham: all consecutively successors of Evarts. By and by the portrait of the present president, Joseph Larocque, will be added to the gallery.

I do not know how other guests of the evening felt among the legal throng, but I seemed to feel around me the spiritual presence of such departed old members as the logical John K. Porter, the dogmatic but learned Edwards Pierrepont, the courtier-like Edwin W. Stoughton, the earnest and eclectic Clarkson N. Potter, the affectionate Vanderpoel, and the Justinian-like David Dudley Field; all of whom, as foundation members of the Bar Association, had done so much to build it up toward its present grandeur and influence.

Almost the cynosures of all attention on this evening were ex-Chief-Justice Noah Davis—benignly dignified, conversationally attractive, and magnetic in presence,—and ex-Chief-Justice Charles P. Daly, sententious and learned in many sciences; who each, by an absurd age-provision of the State Constitution, had in the plenitude of mental vigor been removed from a Bench which for several decades they had adorned and made illustrious.

Many, when walking through the (I was about to write crowd—but the size of the building does not admit of the word—and so I substitute) throngs and groups remarked upon the second and third generations of lawyers that night represented. Sons of Evarts, of Gerard, of Vanderpoel, of Peckham (son of the elder Judge Rufus W.), of Judge Rapallo, of George J. Cornell, the grandson of Chief-Justice Hornblower—William B., a vice-president of the Association—of the brothers Augustus F. and Delafield Smith, and of at least a score of others, whose baby playthings were their fathers' law books in place of blocks for castle-building.

Seldom has there been a social function so successful in New

York City as this late reception in the marble palace of the Bar Association. It goes into New York's local history along with the Dickens ball during the forties, with the Kossuth dinner in 1857, with the ball to the Prince of Wales in 1860, and with the reception by Sorosis of many distinguished authoresses and women of mark.

Divinity was at the Bar Association reception to give its blessing; Medicine, to predict health to the Association; and Justice—here eye unbandaged for the occasion—to smile upon her beloved legal disciples.

This Bar Association, inaugurated in December, 1869, under the committee auspices of Albert Mathews—now retired and indulging in literary pursuits as father-in-law of Mrs. Cornelius Vanderbilt—James C. Carter, and the late Edmund Randolph Robinson—was chartered in the following April, since which time it has been a great power. It has impeached bad judges, has beaten at the polls disfavored candidates for the Bench, and has kept for a quarter-century judicious ward over the best legal interests of the community and interests of their outside comradeship of the Bar. It has watched mischiefs in procedures capable of being cured by remedial statutes, and has prepared and influenced their passage. Moreover, it has been free from cliques or selfish endeavors; and now is about to usher in the new century, stronger, more popular, and more influential than heretofore. At the supper, which closed the reception, all heartily drank to the long life of the New York Bar Association.

David Dudley Field

By WILLIAM G. MULLIGAN

Almost a full century after he walked our hills and valleys as a neighbor, slept in a house we know on a high terrace overlooking the Hudson, and strode to Sleepy Hollow along paths familiar to us, we meet to ponder the greatness of David Dudley Field.

What kind of fellow was he? Did he live a charmed life? Was he a happy man? Did he meet with success wherever he turned? Why does David Dudley Field stand beside the great names of Bracton, Coke, Jeremy Bentham, and Roscoe Pound?

Relics of him are preserved and cherished. Judge Edward J. Dimock has in his Chambers in the New York Federal Court-house Field's high wooden writing desk, similar to a lectern before which a tall man could stand upright, while resting his hands on a top that lifts up like a schoolboy's desk with storage space for books and papers. On the wall beside this stand-up desk is a full-length photograph of David Dudley Field.

He was a virile figure of a man, 6 feet 2 inches tall, broad-chested, and powerfully built. He had wide-set, prepossessing eyes, a square chin, and a solemn face punctuated with a moustache that would have been flowing were it not trimmed straight as a military hairbrush. In his later years a fringe of white hair bordered his bald dome. He stood erect and was decided in his movements, yet graceful. He had a courteous manner and a magnetic personality.

He lived throughout almost all of the 19th century—from 1805 to 1894—and all of his life he worked hard and fought hard. He never smoked and was irascible about those who did. In eating and drinking he followed no special rule. He attributed his robust health to his practice of walking several miles in the open

Editor's Note: Mr. Mulligan is presently a member of the Association's Committee on Courts of Superior Jurisdiction, and is a former Chairman of its Committee on the Municipal Court. The paper printed here was delivered by Mr. Mulligan to an audience of neighbors and friends at Irvington-on-Hudson.

air every day of the year, no matter what the weather. He was not witty, and humor is not to be found in his speeches or writings. He had few personal friends and innumerable enemies; he was truculent, courageous, and self-possessed. He wrote and spoke with wonderful clarity and he was capable of being poetic and tender. Going back to Williams College after 50 years, he said:

"I look into the sky—it is the sky of my boyhood; the stars clear and silent shine upon me and seem to say: 'We shine upon you just the same as we shone fifty years ago.'

"We came as boys; we studied and contended with one another. * * * The hereafter was the land of promise, pleasant and fertile and bright with the dew of morning. The collegian is a dreamer, and, for the most part, a dreaming boy."

Mr. Field was born February 13, 1805 at Haddam, Connecticut, the eldest of 8 children. Their father was a minister educated at Yale. Two younger brothers were also famous—Cyrus W. Field and Stephen J. Field.

Cyrus W. Field, with the help of his eldest brother David, formed the company which laid the first Atlantic Cable in 1858. When Cyrus built a house on a huge tract of land between Dobbs Ferry and Irvington, he named it Ardsley after the ancestral home of the Field family in Yorkshire. The properties ran from the banks of the River up successive heights to Field Terrace where the Victorian house built in 1869 stands today; extended eastward into the valley on the other side, now called Old Ardsley; and southward to the Indian trail meandering from west to east among the hills, which we still use under the name of Ashford Avenue. David Dudley Field was a frequent house guest at the home of his brother Cyrus until Cyrus died in 1892.

Stephen J. Field, another brother, began to practice law in David's New York office but went to California in 1849 and led a boisterous life as a Forty-Niner in that pistol-packing country. He had a duel or two, and committed an open and wilful contempt of an unworthy frontier judge who proceeded to disbar

him. Field got reinstated, and went on to become a judge himself; a man named Terry took offense at one of Stephen's judicial decisions and tried to assassinate him, whereupon Terry was killed in cold blood by a United States Marshal. President Lincoln appointed Stephen Field to the U.S. Supreme Court, where he served for 34 years.

When David Dudley Field left Williams College in 1825 a man could not call himself an attorney and counsellor at law without first having been admitted as an attorney and then separately as a counsellor. Field became a counsellor in New York City in 1830.

Unlike most trial lawyers today, Field was financially successful from the outset and made a lot of money. Among his clients were his brother Cyrus W. Field and the company which laid all the first inter-continental cables. Russell Sage and other millionaires were clients of Field. He also represented the great financiers James Fisk and Jay Gould, who, by the way, was one of the founders of the Ardsley Country Club. Representing Fisk and Gould got Field, as we shall presently see, into serious professional trouble.

His family life began happily when in 1829 he married Jane Hopkins, the cousin of a college friend. The next seven years were joyful ones for Field. His only two children, David Dudley Field, Jr. and Jeanie Lucinda, were born in this period. But then in 1836 Mrs. Jane Field died. Feeling bereft, Field went to Europe for 14 months of travel, trying to dull his grief.

In 1837 he came back from Europe with the idea for a Code of Civil Procedure, and opened his own law office, taking his brother Stephen in as a clerk. Stephen remained with him until 1849 when he left to join the Gold Rush.

Now in 1837 the situation in New York and all other common law jurisdictions was this: A client told his troubles to his lawyer. It was up to the lawyer to choose one of a number of forms of action in which to sue—debt, detinue, trespass, trover, replevin, and so on. By suing in that one form of action the lawyer committed his client's case to it at the client's peril. If evidence at

the trial (which might be held months or years later) showed that the client had a case, but under a different form of action, that was just too bad, and the client might get no relief. Field prepared a Code which simply said:

"There is only one form of civil action. The distinction between actions at law and suits in equity, and the forms of those actions and suits, have been abolished."

With this beautiful simplicity he pulverized barnacles that had been accumulating for centuries on common law pleading and bills in equity. Using plain talk in place of circumlocution, his Code went on to streamline many of the other procedures in courts.

It should not be thought that lawyers welcomed Field's work of codification. It got a hostile reception. As he said, it was "opposed and derided."

But the Code was adopted by the New York Legislature in 1848; successive Legislatures then tinkered with it, until by 1880 it was ten times its original length and becoming complicated. Following years of study by boards and committees there was enacted in 1921 the present Civil Practice Act, which even today is the subject of a work of complete revision; scholars are struggling to simplify the code, to get it back to what Field tried to make it—"a convenient, simple and inexpensive method for the administration of civil justice."

Field wanted New York to codify all the law into 5 codes—the Code of Civil Procedure, the Code of Criminal Procedure (which were adopted) and Codes of civil law, criminal law, and public law.

He worked for 18 years on the five codes, 16 of them without any compensation. The Bar stood up on its hind legs to defeat his efforts to codify the law, James C. Carter led the opposition with The Association of the Bar behind him. Answering Carter and the Bar Association, Field said:

"It would be blindness not to see * * * that American and English lawyers are, from the beginning of their studies,

nurtured with such a diet of prejudice, that the chances are against their believing anything new to be true or anything old to be false."

Carter was the winner but today it is Field who lives in history. Dean Roscoe Pound has pronounced the verdict:

"As American lawyers thought in the last quarter of the nineteenth century, Carter would have been rated the higher. As we think today, Carter has no longer a significant place in the science of law. * * * At that time Field was pronounced a magnificent battler for a lost cause. Today that could be said rather of Carter."

Field was not one of those men to whom fame comes too late. His Code of Civil Procedure was adopted during his lifetime in 24 of the states, was the basis for the Judicature Act reforming procedure in England, the motherland of our common law, and in several British Colonies, India and Australia.

Along with his labors to codify the law and make justice easier for all those who live under law, Field had time for politics, for public cases, and for a turbulent professional career.

In May 1860 Field and Horace Greeley went to Chicago to see Lincoln nominated, only to find that it was Seward who had the delegates. At midnight on May 17th Greeley telegraphed the Tribune in New York that Seward would be nominated. He then went back to the New York delegation's quarters in Tremont House, threw himself down on a bed and said, "All is lost. We are beaten." "NO," Field thundered, "We are not beaten. Get off that bed and we'll go to work." He and Greeley visited one delegation after another throughout the night and at dawn Lincoln's nomination was assured.

Lincoln repaid Field by appointing his beloved younger brother, Stephen J. Field, to the Supreme Court of the United States in 1863.

After the Civil War Field made several notable arguments in the Supreme Court: In *Ex Parte Milligan* he got the Court to free a citizen of Indiana who had been sentenced to death by a

military court in time of peace. The *Milligan* decision is cited today in the recurrent controversies over the right, for example, to court-martial the civilian wife of a soldier stationed in Japan.

In *Cummings v. Missouri* he successfully attacked a statute requiring clergymen, lawyers, and teachers to take a loyalty oath that they had not supported the Confederacy during the Civil War—a controversy of the type in which, it seems, we have to win anew every few generations the glorious victory of our democracy over ignorance and petty animosity.

In *United States v. Cruikshank* which he argued, the Court upheld an act designed to ensure the right of Negroes to vote—and of course the battle for the liberties of Negro Americans continues in the Supreme Court in our times.

In addition to his great Supreme Court arguments Field practiced in the trial courts of New York.

Field's narrow escape from disbarment arose out of his representation of James Fisk and Jay Gould. Briefly the charge was that these were two bad men who were robbing others of their property, and that Field as their lawyer helped them to do it. Among the charges made was that on behalf of Fisk and Gould Mr. Field got Judge George G. Barnard, who was later impeached as one of the Tweed Ring judges, to issue injunctions and other orders against the managements of railroads which Field's clients had decided to raid. In 1872 the Grievance Committee of The Association of the Bar studied Field's conduct and recommended severe discipline. At a crowded meeting of the full membership of the Association the sentiment was strongly against Field. Unpublished longhand notes by an eyewitness at the meeting read:

"Mr. Field defied and threatened the members and all shrunk except Mr. Wheeler H. Peckham who denounced Mr. Field."

Peckham was the prosecutor in the Tweed case in which Field was chief defense counsel. The President of The Association, William M. Evarts, advocated moderation and the motion of the Grievance Committee to punish Field was tabled.

Throughout the final illness of his third and last wife in 1876, Field was engaged in one of his most important jury trials. In his summation at the end of that trial, he said to the jury:

"For myself, personally, this trust has been an occasion of great embarrassment. Severe illness in my family during the whole period has caused me anxiety by day and interrupted sleep by night, which have, in a measure, unfitted me for the discharge of my whole duty to my client."

He made these remarks in his defense of William Marcy Tweed, "Boss Tweed," the great plunderer and thief of public funds. Field sincerely believed that, as he said, "... there can be conceived no * * * government of law, which does not include an independent bar, pledged to the assistance of every man who requires it for the maintenance of *all* the rights which the law promises him."

Replying to Governor Dix's criticism of him for defending Tweed, Field said:

"Dear Governor, do not lend the sanction of your name to * * * trying to frighten lawyers from the performance of their duty, * * *. Teach them, rather, that when they see a man set upon by the whole community, then is the time for lawyers to stand up against the surging crowd, and say that he shall have a fair trial according to the law."

Again, this battle to prevent public opinion from identifying lawyers with their unpopular clients has to be fought all over again in every generation, not to say every decade. Edward Bennett Williams tells how he was introduced as the speaker at the Communion Breakfast of the Greater Boston Association of Holy Name Societies. The Chairman presented Williams as the Attorney for Anastasia, Costello, and Icardi. After the breakfast Williams asked the gentleman, "Why on earth did you identify me with those three of my clients?" The Chairman answered, "Why, Anastasia, Costello, and Icardi were the only three of your clients I felt sure belonged to the Holy Name Society."

Unfortunately it is not only laymen but lawyers, too, who sometimes tar an advocate with his client's brush while at the same time paying lip service to the Canon of Professional Ethics which reads:

"It is the right of the lawyer to undertake the defense of a person accused of crime, regardless of his personal opinion as to the guilt of the accused; otherwise innocent persons, victims only of suspicious circumstances, might be denied proper defense."

Field had been born into the atmosphere of the early 19th century when things French were in vogue under the influence of Jeffersonian democracy, and the French Civil Code (the Code Napoleon) had more appeal for Americans than the English common law.

Later in the century the atmosphere changed and we had our own fully developed system of judge-made common law; successful practicing lawyers were loath to part with it through codification; and the drift toward codifying all the law after the pattern of the Code Napoleon melted away.

This answers the riddle of David Dudley Field—what made him great forever was that his single-handed achievement of a Civil Code was launched at the right moment of history; when his other codes were not adopted the fault was not in himself but in the stars.

The time was ripe for the Code of Civil Procedure in 1848. The time was no longer ripe for codification of the substantive law only 20 years later. Even today the Restatements of the Law, labors of the American Law Institute, show that codification of the substantive law will not occur in our time.

In December 1893 Field was in his 89th year. He went to England to spend Christmas with his daughter, Jeanie Lucinda Musgrave, now herself the widow of Sir Anthony Musgrave. After that Field took a vacation in Italy, which was to be his last. His only son had died at the age of 49 and Field was alone. Upon

landing in New York in April, 1894, he caught cold, suffered a heart attack, and was dead within 24 hours.

Contemplating great men like Field, we can say with him what he said of the Civil War dead:

"Their work is accomplished. They have no more responsibilities to bear, no more duties to perform. Whatever responsibilities and duties remain devolve upon us."

Committee Report

COMMITTEE ON PROFESSIONAL ETHICS

OPINION NO. 849

Question: Two members of the bar, one of whom is a New York State Senator, have formed a partnership and are planning to send out announcements of the new firm. Would it be proper for the announcements to carry any reference to the fact that one member of the firm is a New York State Senator?

Would it ever be proper to include in such an announcement the federal, state, or local government office or position of a member of the bar?

Opinion: Cannon 27 is involved.

It is the view of the Committee that it would be improper to indicate in an announcement of a partnership that one of the members is now holding the office of New York State Senator or any other public office.

March 6, 1961

The Library

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The House of the Association

1896-1961

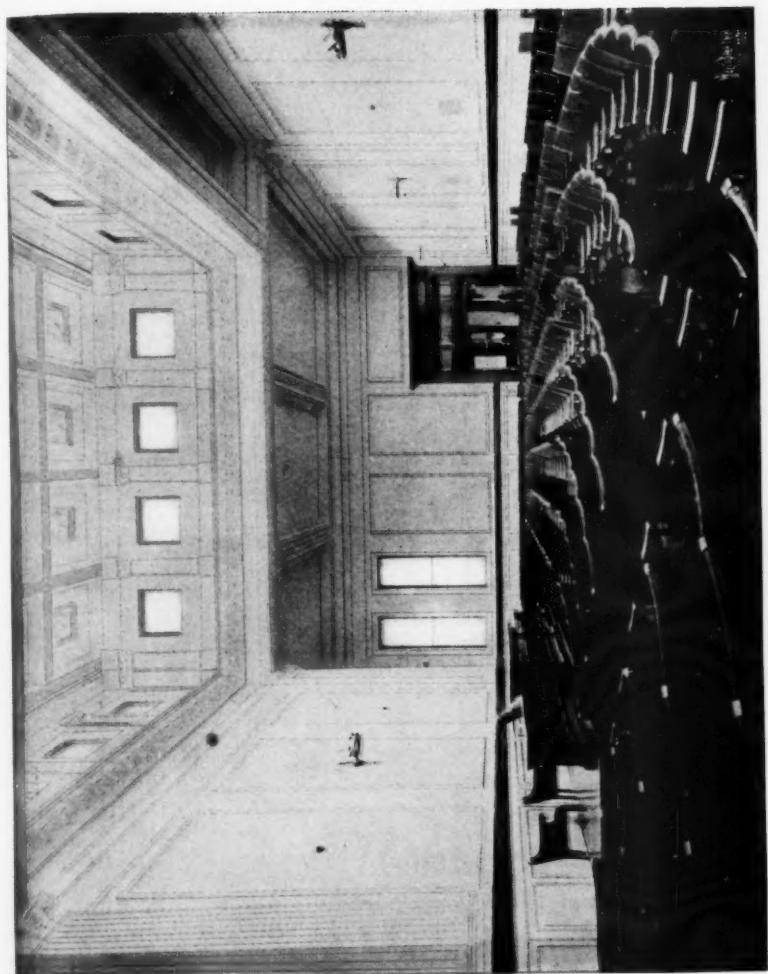
By the 1890's the Association had outgrown its quarters on West 29th Street which were acquired in 1874. The Association purchased a sizeable piece of land on 44th Street, where it built its new House.

The Building Committee reported in 1896, when they turned the key to the new House over to the president: "Anxious as we have been for a convenient internal arrangement and a proper exterior effect, in themselves, we have had an even stronger motive in the endeavor to produce a home suggestive of the achievements, the potentiality, and the aspirations of the Association. It was the deep-seated sense of what this body stands for in the civic life of the city and state that constrained us to accept so large an undertaking; that during the period of construction has continually inspired our thought and effort, and that has made it all a genuine labor of love. This institution has a noble origin, it has accomplished substantial good, it possesses a large influence, and it has incalculable possibilities of future usefulness. When we consider the constant and intimate relation which the sober and righteous enactment and administration of the laws has to our individual and national life, we realize anew the significance and responsibility of a body having for its chartered purpose the maintenance of 'the honor and dignity of the profession of the law.'"

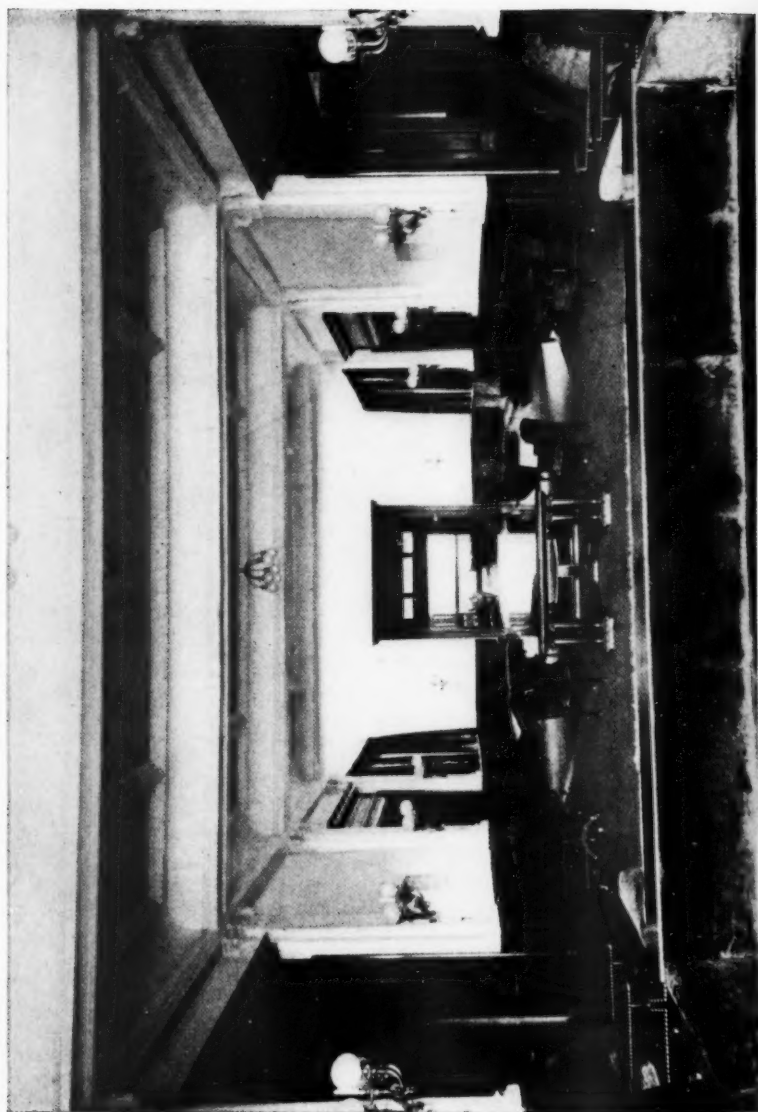
After World War II, when the Association's membership returned to normal, a number of practical and modern additions to the House were made, to accommodate the larger staff and more hurried members who now frequent its halls. It is remarkable how well the present House of the Association has served for over sixty years. The picture of the House in the yearbooks in the closing years of the last century show a quiet uptown street, in a rather fashionable residential part of New York, with morning-coated gentlemen walking about or alighting from their carriages. Today, the House shelters one of the largest law libraries in the country; provides meeting rooms for seventy-odd committees; is host to dozens of governmental hearings and meetings every year and still serves as a gathering place for the city's lawyers.



HOUSE OF THE ASSOCIATION WEST 44TH STREET, 1896



MEETING HALL AT THE HOUSE OF THE ASSOCIATION, 1896

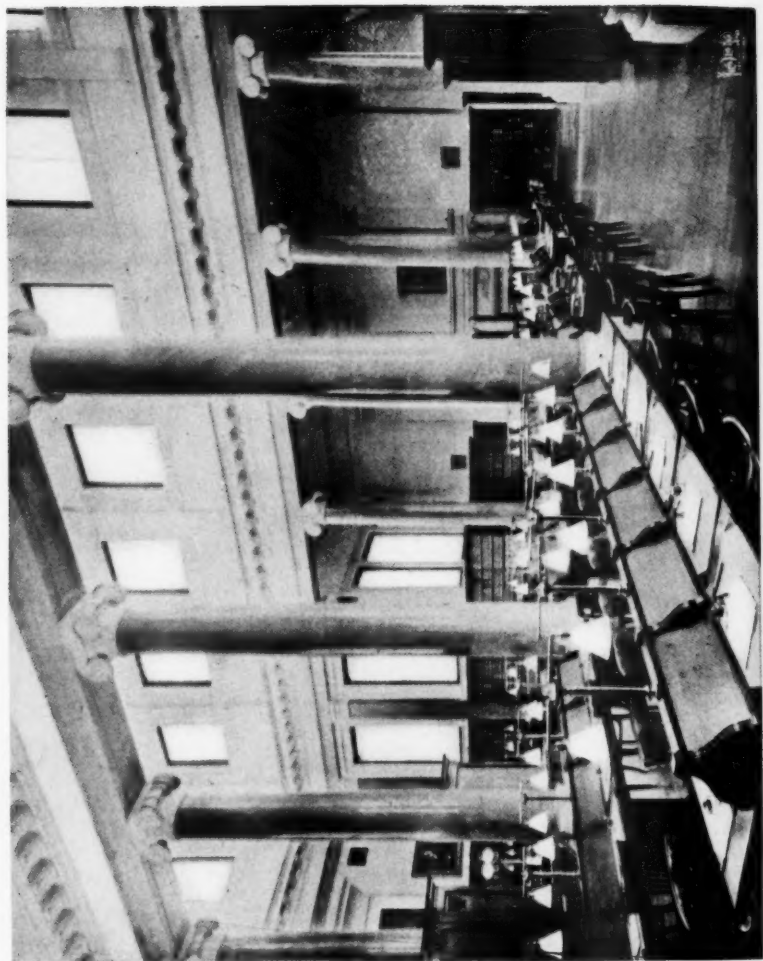


RECEPTION HALL AT THE HOUSE OF THE ASSOCIATION, 1896

RECEPTION HALL AT THE HOUSE OF THE ASSOCIATION, 1896



RECEPTION HALL AT THE HOUSE OF THE ASSOCIATION, 1961



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